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**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Application Number: 09/661,375
Filing Date: September 13, 2000
Appellant(s): EBERLE ET AL.



S. Jafar Ali
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 10 April 2007 appealing from the Office action mailed 19 July 2006.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Appellants have identified three related applications currently under appeal, all of which claim priority from U.S. Provisional Application Serial No. 60/153,222:

(1) U.S. Application Serial No. 09/454,601, now docketed by the Board of Patent Appeals and Interferences.

(2) U.S. Application Serial No. 09/454,597, in which a Supplemental Appeal Brief was filed.

(3) U.S. Application Serial No. 11/005,507, in which an Appeal Brief was filed.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

| | | |
|---|---|---|
| 6246672 | LUMELSKY | 6-2001 |
| 6539359 | LADD et al. | 3-2003 |
| 6430545 | HONARVAR et al. | 9-2002 |

**(9) Grounds of Rejection**

The following grounds of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 27, 28, 34, 35, 43, and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Lumelsky* in view of *Ladd et al. ('359)*.

Concerning independent claims 27 and 28, *Lumelsky* discloses a method and system for singlecast interactive radio system, comprising:

"means for providing at least one voice service, to which a plurality of users may subscribe, that can output personalized content during an interactive voice broadcast" – in general, the singlecast interactive radio system 100 delivers digitized audio-based content to subscribers upon their request; the system preferably includes a plurality of user terminals (column 8, lines 37 to 46: Figure 1); associated with each user is a profile, which defines the user's topics of interest ("personalized content") (column 19, lines 53 to 56);

"means for generating content for the at least one voice service when the at least one voice service is executed" – content authoring tools enable content creators (e.g. news service providers) to produce a highly compressed voice-based information content to be stored on data network (e.g. Internet) servers, such as the data repository 401 (column 8, lines 46 to 50: Figure 1);

"means for generating a unique active voice page for each subscriber of the at least one voice service, wherein a unique active voice page comprises personalized content created by applying subscriber-specific personalization information for a subscriber to the generated content" – personal radio station servers (PRSSs) 201 store multiple subscribers' profiles with topics of individual interest, and assemble content

material from various Web sites according to topics (column 8, lines 50 to 53: Figure 1); associated with each user is a profile, which defines the user's topics of interest ("personalized content"); the profile content is typically defined in terms of a list of topic categories, e.g. international news, sports news, business news, etc. (column 19, lines 53 to 58); when a subsequent session is initiated, the user will receive all information listed in the user's list of topics, but only that information pertaining to the user selected topics of interest (column 10, line 63 to column 11, line 13); via a pre-fetching mechanism, i.e. using the profiles and noted access patterns of the user, the PRSS may anticipate which information may be of interest in the near future and retrieve such data so that the data is available at the PRSS upon user request; cache-based systems on the market include Netscape® (column 20, lines 40 to 52); a user's list of topics of interest defines "a unique active voice page generated for the subscriber";

"means for initiating an outbound communication to the subscriber to establish an interactive voice broadcast with the subscriber" – personal radio station servers (PRSSs) 201 transmit the content to a subscriber's user terminal 301, on the subscriber's request, over the wireless network 403 (column 8, lines 50 to 55: Figure 1); there are preferably two distinct methods of information retrieval via the PRSS directory services; one method is based on assembling the information on all the topics of interest; when a subsequent session is initiated, the user will receive all information listed in the user's list of topics, but only that information pertaining to the user selected topics of interest; "push technology" permits a user to create a profile and to receive information on topics identified in his profile via the previously established search

criteria (column 10, line 63 to column 11, line 30); implicitly, "push technology" involves "initiating an outbound communication to the subscriber".

Concerning independent claims 27 and 28, *Lumelsky* further discloses that the user may, as desired, change the definition of his/her profile. Preferably, a user terminal audibly prompts the user to select topics from among menu selections. However, the user terminal may also be provided with a display on his user terminal such that the user may make his topic selection from a visual, rather than audio presentation. (Column 19, Lines 60 to 66) Thus, it is likely inherent that *Lumelsky* discloses a visual display of a menu from which the user can select topics as links, meeting the limitations of "one or more input elements embedded in the unique active voice page used to request input from the subscriber" "and "by enabling the subscriber to respond to the personalized content via one or more input elements embedded in the subscriber's unique active voice page." Still, if *Lumelsky* does not inherently disclose the limitations of "one or more input elements embedded in the unique active voice page used to request input from the subscriber" and "by enabling the subscriber to respond to the personalized content via one or more input elements embedded in the subscriber's unique active voice page", in what may perhaps be an overabundance of caution in going forward with the current appeal, *Ladd et al. ('359)* is cited to teach these limitations. (Note that *Lumelsky* suggests an environment for web pages, e.g. NetScape at Column 20, Lines 49 to 52.) Still, it is well known for web pages to provide interactive speech applications including VoxML™ for permitting a user into interact with links on a displayed web page through voice commands.

Concerning independent claims 27 and 28, *Ladd et al. ('359)* teaches a markup language for interactive services where information from a service provider is downloaded in real-time (i.e. the information is downloaded contemporaneously with a request for information). (Column 1, Lines 29 to 32) A network access apparatus 102 includes a voice or web browser 250 including Netscape Navigator® or Microsoft Internet Explorer® (column 3, lines 50 to 52), and provides for an interactive speech application using a markup language such as VoxML™. (Column 4, Line 66 to Column 5, Line 2) A voice browser 250 permits a user to interact through the use of an OPTION element within an INPUT element to select options of weather, news, or traffic by voice commands. (Column 27, Lines 4 to 30; Column 36, Line 26 to Column 41, Line 60) An OPTION element with an INPUT element of an application using VoxML™ is equivalent to "one or more input elements embedded in the active voice page" for permitting a user to select interactive services for listening to information about weather, news, or traffic. *Ladd et al. ('359)* teaches an interactive system permitting a user to access up-to-date information from any location in the world via any suitable network access device using voice inputs or commands. (Column 2, Lines 18 to 50) It would have been obvious to one having ordinary skill in the art to provide a voice browser using VoxML™ having one or more input elements embedded in an active voice browser to permit a user to interact in real-time as suggested by *Ladd et al. ('359)* in an interactive radio system of *Lumelsky* for the purpose of permitting a user to access up-to-date information from any location in the world via any suitable network access device using voice inputs or commands.

Concerning claims 34 and 43, *Ladd et al. ('359)* teaches an interactive speech application using a markup language such as VoxML™. (Column 4, Line 66 to Column 5, Line 2)

Concerning claims 35 and 44, *Ladd et al. ('359)* teaches a voice browser 250 permits a user to interact through the use of an OPTION element within an INPUT element to select options of weather, news, or traffic by voice commands. (Column 27, Lines 4 to 30; Column 36, Line 26 to Column 41, Line 60)

Claims 29 to 33, 36, 38 to 42, and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Lumelsky* in view of *Ladd et al. ('359)* as applied to claims 27 and 28 above, and further in view of *Honarvar et al.*

Concerning 29, 33, 38, and 42, the only elements not expressly disclosed by a combination of *Lumelsky* and *Ladd et al. ('359)* (as discussed above) are "wherein the generated content includes information derived from an on-line analytical processing (OLAP) system" and "where the at least one voice service is executed upon satisfaction of a predetermined condition". While on-line analytical processing (OLAP) is well known for personalized web pages, *Lumelsky* does not expressly teach on-line analytical processing (OLAP) executed upon satisfaction of a predetermined condition. However, *Honarvar et al.* teaches the use of online analytical processing (OLAP) in a rules based decision management system, where an inbound event is a trigger to identify that a particular client event has occurred. Such events may be automatically generated due to client behavior or systematically produced at specified time intervals. (Column 3,

Lines 13 to 22: Figure 2) A triggering event due to client behavior or at specified time intervals is execution "upon satisfaction of a predetermined condition." It is stated that a decision management system using on-line analytical processing (OLAP) can provide superior results, increased revenue generation, improved cost-effectiveness, and enhanced customer relationships. (Column 3, Lines 6 to 9) It would have been obvious to one having ordinary skill in the art to provide on-line analytical processing (OLAP) of a service executed upon satisfaction of a predetermined condition as taught by *Honarvar et al.* in the method for singlecast interactive radio of *Lumelsky* for the purpose of providing superior results, increased revenue, and enhanced customer relationships.

Concerning claims 30 to 32 and 39 to 41, *Honarvar et al.* teaches inbound events for triggering may be systematically produced at specified time intervals (i.e. monthly), or a routine evaluation date (a periodic, scheduled evaluation) ("a scheduled, time-based condition" or "triggering event") (column 3, lines 13 to 23: Figure 2); inbound events may be automatically generated due to client behavior as inbound triggering events ("a predetermined condition") (column 3, lines 13 to 23: Figure 2); clients are segregated for applying different rules; for example, a segment for residential customers and another for business customers (column 3, lines 23 to 34: Figure 2); implicitly, whether a customer is a residential or business customer is a property "specified by a user when subscribing"; similarly, clients may be grouped based upon how the organization views the clients, by dividing credit card holders into categories of Bronze,

Gold, Platinum; implicitly, a type of credit card held by a customer is "specified by a user while subscribing".

Concerning claims 36 and 45, *Honarvar et al.* teaches a software based system 10 receives information from customer information systems 20, and tailors customer interactions based on predictive information and decision strategies; software based system 10 then determines an appropriate action which is to be taken by an action-taking system 30; an appropriate action to be taken could include a call to a customer ("initiating an outbound communication to the subscriber comprises initiating an outbound telephone call") (column 2, line 61 to column 3, line 5: Figure 1).

**(10) Response to Argument**

1. Independent Claims 27-28

**a.** and **b.** ***Whether the combination of Lumelsky and Ladd fails to disclose, teach, or suggest "generating a unique active voice page for each subscriber of the at least one voice service, wherein a unique active voice page comprises personalized content created by applying subscriber-specific personalization information for a subscriber to the generated content."***

Regarding Appellants' bold-faced points **a.** and **b.**, it is maintained that *Lumelsky* clearly discloses these features. Appellants' Supplemental Appeal Brief is well-written and well-organized, but is unconvincing to anyone having ordinary skill in the art who has read the reference. All one needs to do is to read the Abstract of *Lumelsky*, where

it is stated, "The personal radio station server stores multiple subscriber profiles with topics of individual interest, assembles a content material from various Web sites according to the topics, and transmits the content to a subscriber's user terminal on subscriber's request over the wireless digital network." *Lumelsky* clearly discloses that associated with each user is a profile, which defines the user's topics of interest. The profile content is typically defined in terms of a list of topic categories, e.g. international news, sports news, business news, etc. (Column 19, Lines 53 to 58) *Lumelsky* discloses that the user may, as desired, change the definition of his/her profile, where preferably, the user terminal audibly prompts the user to select topics from among menu selections. (Column 19, Lines 60 to 63) Thus, it is believed no additional time need be expended on bold-faced points **a.** and **b.** to address arguments set forth by Appellants.

**c.** ***Whether the combination of Lumelsky and Ladd fails to disclose, teach, or suggest "wherein a unique active voice page comprises . . . one or more input elements embedded in the unique active voice page used to request input from the subscriber".***

Regarding Appellants' bold-faced point **c.**, Appellants take a hard stance on the obviousness of a combination of *Lumelsky* and *Ladd et al. ('359)*. Appellants parse out what is disclosed by *Lumelsky* and what is disclosed by *Ladd et al. ('359)*, and conclude the combination does not suggest embedding input elements in a unique active voice page used to request input from the subscriber. However, given the standard maintained by Appellants, an obviousness rejection could never move from Point A to

Point B. It is precisely for that reason that patent case law holds that it is not permissible to attack the teachings of the references individually without addressing what the combination suggests to one having ordinary skill in the art as a whole. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Appellants only look at the presence of CES-based files in *Lumelsky* to conclude that a combination with *Ladd et al. ('359)* is impossible.

Moreover, it is now noted that *Lumelsky* may be understood to inherently disclose embedded input elements. *Lumelsky* states, "The user, may, as desired, change the definition of his/her profile. Preferably, the user terminal audibly prompts the user to select topics from among menu selections. However, the user terminal may also be provided with a display on his user terminal such that the user may make his selections from a visual, rather than audio, presentation." (Column 19, Lines 60 to 66) It is not completely clear whether Appellants' "unique active voice page" must be interpreted as a virtual audio interface or a real visual interface. However, *Lumelsky* discloses both. *Lumelsky* discloses an audio interface having menu selections from which a user may select topics for his/her profile in response to audible prompts. One skilled in the art would know that the audible prompts are equivalent to embedded input elements. But even if the audible prompts are not enough, *Lumelsky* discloses making topic selections from a visual presentation. Inherently, one skilled in the art would know that making selections from a visual presentation is by means of clicking on links with a

computer mouse. That is, a visual interface has embedded input elements, implicitly, for permitting one to make selections.

Furthermore, in what was perhaps an excess of caution before going forth with the current appeal, *Ladd et al. ('359)* was cited for the feature of the embedded input elements used to request input from the subscriber and to enable the subscriber to respond to the personalized content. *Ladd et al. ('359)* teaches menus for making selections in an environment for a markup language such as VoxML™. Those skilled in the art know that VoxML™ is markup language that combines audible and visual interfaces making it possible for a user to interact with an interface either by clicking on links or by speaking displayed keywords. There are links embedded in the markup language through which the user can select options of "breakfast, lunch, or dinner" or "coke, pepsi, 7 up, or root beer". (Column 17, Lines 1 to 20: Figures 6 and 7) *Ladd et al. ('359)* is certainly related to the problem that Appellants are trying to solve: providing a voice interface for a user to make selections from a menu. And, *Ladd et al. ('359)* meets any formal requirement for teaching, suggestion, or motivation, because *Ladd et al. ('359)* sets forth the advantage to permit a user to access up-to-date information from any location in the world via any suitable network access device. (Column 2, Lines 31 to 39)

***d. Whether the combination of Lumelsky and Ladd fails to disclose, teach, or suggest "initiating an outbound communication to a subscriber to establish an interactive voice broadcast with the subscriber."***

Various interesting issues are raised by Appellants' argument that *Lumelsky* fails to disclose initiating an outbound communication to a subscriber to establish an interactive voice broadcast with the subscriber. Basically, Appellants' argument is that *Lumelsky* discloses that a subscriber initiates the communication by issuing a log-on command or by placing a call from their user terminal.

However, there are a variety of good reasons to rebut the argument made by Appellants.

The best reason is that *Lumelsky* discloses "push technology". (Column 11, Lines 21 to 25) Those skilled in the art know that push technology involves a passive reception of communications, where the communications may indeed be things that the user didn't even want in the first place. *Wikipedia*, for what it's worth, distinguishes push technology as a communication protocol where a request for a given transaction originates with a publisher, or central server, as opposed to a request for transmission of information originating from a receiver, or a client. It characterizes e-mail as a classic push medium, because a user doesn't request e-mail, e-mail is instead just passively received. Spam and advertising banner ads are additional examples of push communication. Thus, the fact that *Lumelsky* discloses push technology strongly suggests to one having ordinary skill in the art disclosure of an outbound communication being initiated at the publisher, or server, rather than by a client, or subscriber, in at least one alternatively-disclosed embodiment.

An additional way to rebut Appellants' argument is to note that simply because *Lumelsky* discloses calling up the radio service and logging on does not preclude the

fact that the communication is initiated by the network server. In earlier times, when only dial-up access to the Internet was available, a user would have to call up an internet service provider and log on before anything could be done online. Only subsequently could a user receive any information. However, the fact that a user must call up and log on to establish service does not impact one way or the other who initiates a communication of the information. The information is broadcast, in the words of the claims, and singlecast, as in the title of *Lumelsky*, from the server to the client, either way. The content is what is being communicated, not the establishment of any session.

Furthermore, there are additional reasons relating to the doctrines of claim differentiation and broadest reasonable interpretation, and disclosure of embodiments from Appellants' own Specification, which suggest that a session may still be established by a call from a subscriber, only following which is message content delivered to the user, thus, not precluding a call up and log on in Appellants' invention, and as equivalently disclosed by *Lumelsky*. (See Specification, Page 13, Line 12 to Page 14, Line 2; Page 14, Lines 16 to 20; and Page 16, Line 10 to Page 17, Line 9) Rather than rehashing these arguments in detail, the Board may refer to the final rejection. Moreover, it is noted that the term of independent claims 27 and 28 is "an interactive voice broadcast"; if the broadcast is interactive, then how, one may wonder, can the user play no role in its initiation?

2. Dependent claims 33, 36, 42, and 45

Admittedly, neither *Lumelsky* nor *Ladd et al. ('359)* discloses on-line analytical processing (OLAP) or initiating an outbound telephone call to the subscriber. However, these features are taught by *Honarvar et al.*, and reference is made to the "Grounds of Rejection", above, for where these features are taught by numbers in Column and Line. Here, it would just be beneficial to point out the overall environment of what was considered in making the rejection. Appellants' alleged invention is really about incorporating what is known in generating personalized web pages on Yahoo™ and Google™, and applying it to voice services. Surely, one of ordinary skill in the art would know to set up personalized web pages on Yahoo™ and Google™, providing user selected content of news, weather, stocks, television listings, favorite comic strips, etc., etc., that are generated for the user every time that web site is accessed from a user's favorite list of web sites. On-line analytical processing ((OLAP) is a related feature of personalized web pages. OLAP automatically establishes conditions when to update the news, when to update the stocks, and when to update the weather. OLAP might send a user an automatic e-mail reminder that a credit card bill was mailed and will soon be due. These are the kinds of business strategies that are disclosed by *Honarvar et al.*, and which include a call to the customer. The point is that OLAP provides a way of enabling common business practices on the Internet. Moreover, *Honarvar et al.* gives a formal teaching, suggestion, and motivation for combination: to provide superior results, to increase revenue, to improve cost-effectiveness, and to enhance customer relationships.

Therefore, the rejections of claims 27, 28, 34, 35, 43, and 44 under 35 U.S.C. §103(a) as being unpatentable over *Lumelsky* in view of *Ladd et al. ('359)*, and of claims 29 to 33, 36, 38 to 42, and 45 under 35 U.S.C. §103(a) as being unpatentable over *Lumelsky* in view of *Ladd et al. ('359)*, and further in view of *Honarvar et al.*, are proper.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Martin Lerner

Primary Examiner

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